72

FILED
OCT 2 6 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(3)

No. 07-3
Fall Term

In The Supreme Court of the United States

Justinian Rweyemamu
Petitioner
v.
Connecticut Commission on Human Rights and Opportunities et al.
Respondents

Petition for a Writ of Certiorari to the Connecticut Appellate Court

---

PETITION FOR A REHEARING

Harold H. Burbank, II, Esq.
Counsel of Record
84 N. Mountain Rd.
Canton, CT 06019
860.693.2687

CONTENTS

Table of Contents.....i, ii

Table of Authorities.....i

Grounds for Petition Rehearing.....1

Certification of Counsel.....7

Certification of Service.....8

AUTHORITIES

Bollard v. California Province of Jesus, 196 F.3d 940 (9th Cir. 1999).....4

Brinkerhoff-Faris Trust Co. v Hill, 280 US 50.....1

Elvin v Calvin Presbyterian, 375 F.3rd 951 (9th Cir. 2004).....4

Hickman v. Taylor, 327 US 808.....1

Petruska v. Gannon University, 448 F.3rd 61 (Fed. 3rd Cir. 2006).....2

Rayburn v. General Conference of Seventh Day Adventists, 772 F.2d 1164 (4th Cir. 1985).....4

Rweyemamu v. CHRO, 98 Conn.App.646, 654-55, 911 A.2d 319 (2006).....4

GROUNDS FOR PETITION FOR REHEARING

This petition for rehearing is intended to clarify arguments advanced in original petition for certiorari, and state substantial grounds not previously presented. Hickman v. Taylor, 327 U.S. 808, 328 U.S. 876; 329 U.S. 495;Brinkerhoff-Faris Trust Co. v. Hill, 280 U.S. 50.

Petitioner presented the Court with a two part question: whether a federal common law and state religion statute "ministerial exception" to Connecticut employment discrimination statutes denied Petitioner's First and Fourteenth Amendment fundamental right to court access, and does unconstitutional denial of court access deny Petitioner's First and Fourteenth Amendment due process and equal protection of Connecticut's employment discrimination laws. The key issue in both questions is the constitutionality of a ministerial exception to Connecticut employment discrimination laws. Petitioner argued that the exception, in this case grounded in the First Amendment free exercise clause and a state religious freedom statute by the Connecticut Appellate Court, is not constitutional for any reason, and is a clear violation of Petitioner's Fourteenth Amendment due process and equal protection rights to Connecticut employment discrimination statutory rights to freedom from race, color, ethnicity and national origin workplace discrimination.

Fundamental to an analysis of the problem is a discussion of the right of churches to govern themselves in so called religious matters. This right is not absolute. Where churches act with secular intolerance rather than religious conviction there are no constitutional guarantees protecting that intolerance. Petitioner argued that this is especially true where Connecticut expressed a compelling interest by enacting employment discrimination statutes of general application, which Connecticut agencies and courts refuse to apply only to ministers.

Petitioner moves the Court to consider the ministerial exception analysis and judgment of Judge Edward Becker in Petruska v. Gannon University, 448 F.3rd 61(Fed.3rdCir.2006)
which held:

> We adopt a carefully tailored version of the ministerial exception. Where otherwise illegal discrimination is based on religious belief, religious doctrine, or the internal regulations of a church, the First Amendment exempts religious institutions from Title VII. In such cases, restricting a church's freedom to select its ministers would violate the Free Exercise Clause by inhibiting the church's ability to express its beliefs and put them into practice. Furthermore, questions about religious matters would pervade litigation,

> entangling courts in ecclesiastical matters and violating the Establishment Clause. But where a church discriminates for reasons unrelated to religion, we hold that the Constitution does not foreclose Title VII suits. Employment discrimination unconnected to religious belief, religious doctrine, or the internal regulations of a church is simply the exercise of intolerance, not the free exercise of religion that the Constitution protects. Furthermore, in adjudicating suits that do not involve religious rationales for employment action, courts need not consider questions of religious belief, religious doctrine, or internal church regulation, a process that would violate the Establishment Clause by entangling courts in religious affairs. Petruska, 615

Petitioner argued that the same logic and principles apply to Connecticut employment discrimination law, precluding either a First Amendment free exercise clause or state religion statute ministerial exception. Judge Becker would disagree that the Connecticut Appellate Court rightly held that, "The constitutional guarantee of the free exercise clause of religious authority *requires* (emphasis added) secular institutions to defer to the decisions of religious institutions in their employment relations with their religious employees", and that the employment practices of religious institutions are a form of "religious belief" protected by the state religious

freedoms statute which by legislative history, rather than specific statutory grant, indicates a ministerial exception beyond constitutional challenge. Rweyemamu v. CHRO, 98 Conn.App.646, 654-5, 911 A.2d 319 (2006).

Petitioner and Petruska rejected the Rayburn v. General Conference of Seventh-Day Adventists holding that "in 'quintessentially religious matters', the free exercise clause of the First Amendment protects the act of a decision rather than the a motivation behind it." Id, 772 F.2d 1164 (4thCir.1985) at 1167-68. Petitioner and Petruska supported Bollard v. California Province of Jesus, 196 F.3rd 940 (9thCir.1999) and Elvin v. Calvin Presbyterian, 375 F.3rd 951(9th.Cir.2004) where they held that the ministerial exception required nuanced analysis in order to avoid trenching on religious freedom without entirely eviscerating government's otherwise fully applicable command to protect employees from unlawful discrimination - "even employees of religious organizations" (referring to sex discrimination). They supported Bollard and Elvin where they held that the nature of a limited church employment inquiry combined with the ability of the court to control discovery can prevent a wide ranging intrusion into sensitive religious matters. Bollard at 950. Such a restricted inquiry would not require a court to evaluate religious doctrine or the "reasonableness" of the religious practices followed within the church. Instead, the court would make secular judgments about the nature and severity of the alleged

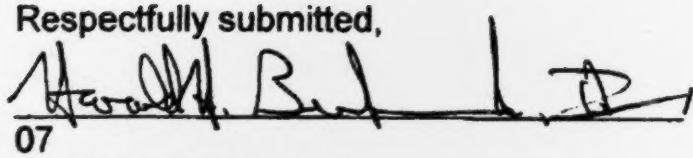
secular employment discrimination. Bollard. Id.

CONCLUSIONS

Petitioner submitted a thoroughly documented claim of state employment discrimination to Connecticut. The only reason the that the state human rights agency and courts rejected the claim was because of an unconstitutional ministerial exception to state discrimination law. The state and federal courts are split on how to manage competing claims to protect church First Amendment free exercise clause and establishment clause religion internal affairs rights to freedom from state interference, and the compelling state interests to protect ministers from secular employment discrimination. Petitioner prays the Court to rehear and reconsider the merits of the ministerial exception, to set a national standard to provide Fourteenth Amendment due process and equal protection of state employment discrimination laws currently unavailable to Connecticut ministers.

The petition for rehearing should be granted.

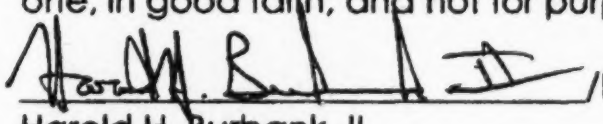
Respectfully submitted,

 /Date: 11-13-07

Harold H. Burbank, II
84 N. Mountain Rd.
Canton, CT 06019
860-693-2687
For Petitioner

Certification of Counsel

I hereby certify that this petition for rehearing is restricted to the grounds specified in paragraph one, in good faith, and not for purposes of delay.

 /Date: 11-13-07

Harold H. Burbank, II
84 N. Mountain Rd.
Canton, CT 06019
860-693-2687

Certification of Service

I hereby certify that 3 copies of this petition for rehearing were US mailed to the parties on ~~10-26-07~~ 11-14-07 as follows:

Charles Krich, Esq.
CHRO
21 Grand St., Ste. 409
Hartford, CT 06106
860-541-3429
For respondent Connecticut Commission on Human Rights and Opportunities

Jeffery Buebendorf, Esq.
PO Box 391
Norwich, CT 06360
860-889-3321

/Date: 11-13-07
Harold H. Burbank, II